

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 626/2006

Judgment delivered on: November 29 ,2007

Madan Lal

..... Appellant.

Through: Mr. Sudhir Talwar with Mr. Rajeev
Chauhan, Advs.

versus

Kanwal Sethi & Ors.

..... Respondents

Through: Ms. Shantha Devi Raman, Adv.
for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

By way of this appeal the appellant has sought enhancement in the compensation amount over and above as awarded by the Tribunal. The contention of the counsel for the appellant, Mr.Sudhir Talwar, is that the Court has not considered the rise in the Minimum Wages while awarding the compensation towards

the loss of dependency. Counsel further contends that the appellant has suffered a kind of permanent memory loss and due to which even now he is not in a position to work. Counsel further contends that the appellant was discharged from the trauma centre just after four days not because that his treatment was over, but because of the fact that there were no beds to accommodate him. Counsel thus claims that the case of the appellant deserves further enhancement as a meager amount of Rs. 58,276/- has been awarded.

Per contra Ms. Shantha Devi Raman, counsel for the respondent refutes the submission of the counsel for the appellant. She states that just and fair compensation has been awarded by the Tribunal. Counsel contends that in the absence of any evidence to prove the income, the Tribunal has assessed the income of the appellant on the basis of the Minimum Wages Act. Counsel further contends that the appellant has been given compensation towards his income for a period of four months although he remained hospitalized only for a period of six days. Counsel also contends that no evidence has been placed on record or proved by the appellant to show that the appellant has suffered any kind of permanent memory loss.

I have heard learned counsel for the parties and perused the records.

The appellant had pleaded his income at Rs. 8,000/- per month from his avocation as a carpenter. Since no cogent or material evidence was adduced to prove the income, therefore, the Tribunal has assessed the income of the appellant in the category of skilled worker on the basis of the Minimum Wages as applicable on the relevant date of the accident.

The appellant remained under treatment for a period of four months, therefore, the Tribunal has granted four months income towards the loss of income suffered by the appellant. The Tribunal has also been quite considerate to award a sum of Rs. 10,000/- towards the loss of future income although no evidence in this regard was placed by the appellant. Special diet and conveyance charges have also been allowed by the Tribunal even in the absence of any proper evidence placed by the appellant. This case appears to be the case of simple injury and had it been the case of some kind of permanent disablement or of suffering of any grave injury, as is alleged, the same could have been proved only with the help of a medical evidence and not in the absence of such evidence. The appellant has failed to place anything on

record to show that he had suffered any kind of brain injury due to the accident or any permanent loss to his memory. In this regard the Hon'ble Supreme in **Lata Wadhwa v. State of Bihar,(2001)**

8 SCC 197 has observed as follows:-

“In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation.”

In the absence of any evidence placed on record no infirmity can be found in the findings of the Tribunal.

No merit. Dismissed.

At this stage counsel for the appellant points out that the Tribunal has given the direction to keep the 75% of the amount in a fixed deposit with any nationalized bank for a period of three

years. Counsel claims that the appellant being the poor person, therefore, at least the said amount be made available to him for his sustenance and for his medical treatment. The request of the counsel for the appellant appears to be genuine. Let the entire amount be made available to the appellant.

November 29, 2007
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KAILASH GAMBHIR, J.